Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1623

SUSIE GRIFFIN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Susie Griffin, the petitioner herein, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above cause on the 13th day of March, 1978.

OPINIONS BELOW.

The opinion of the Circuit Court of Appeals is attached hereto as Appendix A, *infra* page 1. The judgment of the United States District Court for the Northern District of Indiana, Hammond Division is in the record of proceedings of the trial court.

JURISDICTION.

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on March 13, 1978. Petitioner timely filed her Petition for Rehearing on the 27th day of March, 1978, said petition being denied by the Circuit Court of Appeals on the 31st day of March, 1978. The jurisdiction of the Supreme Court is invoked under Title 28, § 1245 of the United States Code.

QUESTIONS PRESENTED.

I. Whether the Court of Appeals misapplied the statutory and case law in affirming petitioner's District Court conviction of a violation of the Travel Act, 18 U. S. C. § 1952(a)(3)?

II. Whether the Court of Appeals misapplied the existing case law in affirming petitioner's District Court conviction of 21 U. S. C., § 846, conspiracy to violate 21 U. S. C. 841(a)(1)?

III. Whether the Court of Appeals misapplied existing statutory and case law in affirming the District Court's finding that petitioner-defendant's motion for additional discovery should be overruled, and whether said ruling of the District Court violated petitioner's 5th and 6th amendment constitutional rights to due process of law and confrontation of witnesses?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED.

1. (a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—

   (3) otherwise promote, manage, establish, carry on or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform

any of the acts specified in subparagraphs (1), (2), or (3) shall be fined not more than $10,000.00 or imprisoned for not more than five years, or both. Title 18 U. S. C. § 1952(a)(3).

2. (a) Except as authorized by this Subchapter, it shall be unlawful for any person knowingly or intentionally

   (1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute or dispense a controlled substance. Title 21 §841(a)(1).

3. Any person who attempts or conspires to commit any offense defined in this Subchapter is punishable by imprisonment or fine or both, which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy. Title 21 U. S. C. 846.

4. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation. U. S. Constitution Amendment V.

5. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his

favor, and to have the Assistance of Counsel for his defense. U. S. Constitution Amendment VI.

STATEMENT OF FACTS.

Petitioner Susie Griffin was charged by indictment with one count of conspiring to violate 21 U. S. C. §§ 841(a)(1) (distribution of heroin) and one count of violating 18 U. S. C. § 1952(a)(3), (The Travel Act). Charged with petitioner on the conspiracy count were Eddie Green and Samuel Franklin. Eddie Green was also charged, along with the petitioner, with violation of the Travel Act, and further, Green was charged individually with two counts of violation of 21 U. S. C. § 843(b), (Using the telephone to facilitate the distribution of heroin).

Trial by jury of all defendants began on November 8, 1976 in the District Court and resulted with Samuel Franklin receiving a not guilty verdict, Green being found guilty of all four counts and the petitioner being found guilty of both the conspiracy count and the violation of the Travel Act count.

A direct appeal was filed to the Seventh Circuit Court of Appeals, and oral argument was heard on the 8th day of December, 1977. The decision of the Court of Appeals was to affirm the convictions of petitioner. Said decision was issued in an unpublished order dated March 13, 1978.

A Petition for Rehearing was filed, pursuant to Rule 40, Federal Rules of Appellate Procedure, on March 27, 1978, said petition being denied by the Court of Appeals on March 31, 1978, whereupon, petitioner files this application for Writ of Certiorari in the United States Supreme Court.

THE EVIDENCE.

I.

The Court of Appeals based their affirmation of petitioner's conviction of violation of the Travel Act on knowledge possessed only by co-defendant Eddie Green (unpublished order of the Court of Appeals Order, page 3). The court stated: "Green had been told that the drug was to be resold in the St. Louis area. Therefore, according to what Green knew, no matter where the actual sale took place, it was necessary and essential to the success of the plan that the drug and one of the parties travel interstate". However, there was no where in the record any reference or statement that petitioner Griffin had any knowledge that the buyer was from St. Louis or that the buyer was going to sell the drugs in the St. Louis area. This misunderstanding of the facts of this case by the Court of Appeals led them to derive from the language of the case of *United States* v. *Bursten*, 560 F. 2d 779 (7th Cir. 1977), that: "Although we feel there is some merit to defendant's claim, we believe the trip of August 13 was sufficient to constitute a violation of the Travel Act." (Unpublished order of the Court of Appeals, page 2).

Petitioner respectfully asserts that the Court of Appeals, by following the above-mentioned line of reasoning, applied cases cited in their unpublished order on page 3 that relate to a defendant's participation in a present, ongoing, unlawful activity. Petitioner also suggests the Court of Appeals based this line of reasoning on *"Defendant's"* knowledge of the buyer's plans. This knowledge, even if petitioner Griffin had it, however, would add nothing to this analysis unless it was shown that petitioner had some control or interest in the disposition of the drugs. Petitioner would argue that the interpretation of the Travel Act most closely related to the circumstances and facts of her case, is more accurately set out in the case of *Rewis* v. *United States*, 401 U. S. 808, 91 S. Ct. 1056, at pages 811 and 812, where the Supreme Court's opinion states:

> "Legislative history of the Act is limited, but does reveal that § 1952 was aimed primarily a organized crime and, more specifically, a persons who reside in one state while *operating* or *managing* illegal activities in another . . ."
>
> "Congress did not intend that the Travel Act should apply to criminal activity *solely because that activity is at times patronized by persons from another state.*" (Emphasis supplied.)

Thus, petitioner states there was no showing of knowledge or intent *on her part* to engage in the operation or management in any interstate criminal activity as mandated by the Supreme Court's holdings in *Rewis, supra,* and *Erlenbaugh* v. *United States,* 409 U. S. 239, 93 S. Ct. 477. For these reasons, petitioner strongly suggests the Court of Appeals has misapplied the case law to petitioner's fact situation.

II.

Further, petitioner suggests the Court of Appeals failed to understand the facts and evidence, as shown by the transcript, in applying the case law to the count of conspiracy. In the Court of Appeals' unpublished order, page 6, the Court states:

> "Griffin was present on all three occasions when Lewis (the buyer) and Green met to make arrangements for the drug sale."

Based upon this presumption, the Court reasoned that the jury could have found Green and Griffin were co-conspirators under the standard set out in *Glasser* v. *United States,* 315 U. S. 60 (1942).

However, the transcript of the record at pages 131 and 132 clearly indicates that the discussion concerning price was in Green's house at a time no one else was present. There was no showing in the record that Griffin was present during any conversations concerning sale or purchase of drugs. For this reason, petitioner suggests the Court of Appeals should have

applied the standard set out in *United States* v. *Baker,* 449 F. 2d 845 and *United States* v. *Jeffers,* 520 F. 2d 1256, where on similar facts the court held there was a showing of mere presence or association, but no conspiracy at the time of the drug sale.

III.

Finally, petitioner Griffin would show that the Government was, as a matter of law, privy to information concerning the conviction record of its informant, Lewis, and failed to fully disclose such information to the defense. This misconduct was such that it hindered petitioner's defense and denied her the constitutionally required rights to a fair trial and confrontation of witnesses, pursuant to the 5th and 6th Amendments to the U. S. Constitution.

The Court of Appeals states the petitioner's counsel was allowed by the trial court to fully impeach the testimony of Lewis and that this cured the defect. Petitioner would assert, however, that the Government had a duty under *Brady* v. *Maryland,* 373 U. S. 82, 83 S. Ct. 1144, to faithfully disclose the materials requested by the defense in their pretrial motions and that simply because the materials withheld could only be used for the purpose of impeachment, the Government's duty was not diminished. (See *Naupe* v. *Illinois,* 360 U. S. 264, 79 S. Ct. 1173.) Thus, the Court of Appeals' affirmance of the trial court's denial of petitioner's timely made motion for additional discovery because petitioner could make no showing the Government had any other undisclosed information, placed petitioner in a "Catch 22" dilemma, requiring *petitioner* to show the Government was withholding information when the only way to make such a showing would be for petitioner to have access to the information the Government was withholding.

This situation, petitioner would suggest, deprived her of her 5th and 6th Amendment rights to due process and confrontation of opposition witnesses.

REASONS FOR GRANTING WRIT.

As cause for granting this Writ of Certiorari, your petitioner would show:

1. The decision of the Court of Appeals on the issue of petitioner's conviction of a violation of the Travel Act is in conflict with the U. S. Supreme Court's decisions in *Rewis* v. *United States,* 401 U. S. 808, 91 S. Ct. 1056, and *Erlenbaugh* v. *United States,* 409 U. S. 239, 93 S. Ct. 477, in that these decisions require the showing of an intent to manage or operate an interstate criminal activity, and there was no showing of any intent of this type on the part of the petitioner anywhere in the record.
2. The decision of the Court of Appeals as to petitioner's conviction of conspiracy to distribute drugs is in conflict with its decisions in *United States* v. *Baker,* 499 F. 2d 845 and *United States* v. *Jeffers,* 520 F. 2d 1256 where, on similar facts, the Court ruled there was no showing of conspiracy, but only a showing of mere presence of association.
3. Finally, the Court of Appeals' ruling upholding the denial by the trial court of petitioner's Motion to Compel Discovery, violated petitioner's rights under the 5th and 6th Amendments—due process of law and confrontation of opposition witnesses—these violations being brought about by the Government's withholding of materials requested by petitioner.

WHEREFORE, your petitioner, Susie Griffin, respectfully prays that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Seventh Circuit in the above-captioned cause.

Respectfully submitted,

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APPENDIX A.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

(Argued December 8, 1977)

March 13, 1978

Before

HON. WILBUR F. PELL, JR., *Circuit Judge*
HON. ROBERT A. SPRECHER, *Circuit Judge*
HON. HARLINGTON WOOD, JR., *Circuit Judge*

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* vs. EDDIE GREEN, SUSIE GRIFFIN, *Defendants-Appellants.*	Nos. 77-1247, 77-1309
	Appeal from the United States District Court for the Northern District of Indiana, Hammond Division.
	H CR 76-48
	Phil H. McNagney, Jr., Judge.

ORDER

Defendants-Appellants Green and Griffin (along with Samuel Franklin, who was found not guilty) were charged in Count I with conspiring to violate 21 U. S. C. §§ 841(a)(1) (distribution of heroin). In Counts II and III, Green was charged with violation of 21 U. S. C. § 843(b) (using the telephone to facilitate the distribution of controlled substances), and in Count IV both Green and Griffin were charged with violation of the Travel Act, 18 U. S. C. § 1952(a)(3). Green was found

guilty on all counts, and Griffin was found guilty on Counts I and IV. Both appeal.

Green and Griffin allege there was insufficient evidence to convict them on Counts I and IV. Other errors are also alleged involving Counts II and III, evidentiary rulings by the court, certain jury instruction, and the denial of Griffin's motion for additional information as to the informant-witness' conviction record.

I.

Griffin and Green argue that their trip from Indiana to Illinois on August 13 was insufficient to convict them of violation of the Travel Act. They argue that this single trip was too minimal and incidental to bring them within the scope of the Travel Act. In addition, they claim that the evidence shows that they were in fact induced into making the trip by the DEA informer, and therefore the trip cannot be used to find a violation of the Act. We have examined the purpose and scope of the Act, and although we feel there is some merit to defendants' claim, we believe the trip of August 13 was sufficient to constitute a violation of the Travel Act.

We have reviewed numerous decisions interpreting and applying 18 U. S. C. § 1952, particularly those of the Seventh Circuit: *United States* v. *Altobella,* 442 F. 2d 310 (7th Cir. 1971); *United States* v. *McCormick,* 442 F. 2d 316 (7th Cir. 1971); *United States* v. *Isaacs,* 493 F. 2d 1123 (7th Cir. 1974), *cert. denied,* 417 U. S. 976 (1974); *United States* v. *Rauhoff,* 525 F. 2d 1170 (7th Cir. 1975); *United States* v. *Peskin,* 527 F. 2d 71 (7th Cir. 1975), *cert. denied,* 429 U. S. 818 (1977); and *United States* v. *Bursten,* 560 F. 2d 779 (7th Cir. 1977), and agree that "[t]he test for application of § 1952 is the nature and degree of interstate activity in furtherance of the . . . crime." *Isaacs, supra,* at 1148.

In applying this test to the case before us, we note that from the first contact it was clear that the proposed drug sale would

be an interstate transaction, for Green and Griffin lived in Indiana and Lewis lived in Missouri, and in addition, Green had been told that the drug was to be resold in the St. Louis area. Therefore, according to what Green knew, no matter where the actual sale took place, it was necessary and essential to the success of the plan that the drug and one of the parties travel interstate. The fact that only one such trip was actually made by them was not because Green and Griffin intended to restrict their illegal operation to the state boundaries but because Lewis had been willing on the previous occasions to come to Indiana. Consequently, we do not agree with appellants' characterization of the interstate travel as minimal and only incidental to the plan, thus outside the scope of the Travel Act. See *United States* v. *Bursten, supra,* at 784.

Appellants also argue that the trip was "induced" by Lewis, the DEA informer, and for this reason the trip falls within the prohibition announced in *United States* v. *Archer,* 486 F. 2d 670, 682 (2d Cir. 1973): "[The Travel Act] did not mean to include cases where the Federal Officers themselves supplied the interstate element and acted to insure that an interstate element would be present." While we share the view of the Second Circuit as to this limitation on the scope of the Travel Act, we do not believe this is such a case. First, we note that the defendants were not charged with the violation based on the interstate travel of the informer, but rather with their own travel. The testimony revealed that the interstate trip by Griffin and Green occurred after Lewis' statement that he did not want to come to Gary, Indiana, as he had done on his previous unsuccessful attempt to buy drugs. However, there is no support in the record for the conclusion that Griffin and Green were unwillingly induced to travel interstate. Rather, the facts show that Green's response to Lewis' statement that he did not wish to come to Gary, Indiana, was to propose to Lewis that he come as far as Chicago, to call from there and arrangements would be made. When Lewis did call after his arrival in Chicago, Green's first

suggestion for a meeting place was the Roberts Motel in Chicago, Illinois. When Lewis stated he would not meet him there, Green asked if he knew where the Greyhound Bus Station in downtown Chicago was located. Plans were made to meet at the station, Lewis was picked up there by Green and Griffin, and the actual drug transaction took place some time later that evening on the south side of Chicago. This evidence shows that Green himself was not unwilling to make the trip to Chicago but rather actively participated in arranging a mutually satisfactory meeting place. There is nothing in the record to suggest that the location of the meeting place for the drug sale was within the control of Lewis. We do not regard a trip made under such circumstances to be the minimal, fortuitous, unwillingly induced trip that defendants claim it to be. Accordingly, we find there was sufficient evidence from which the jury could conclude that the trip on August 13 by Green and Griffin was a violation of the Travel Act.[1]

Finally, we also find that the court below did not err in its jury instructions pertaining to the Travel Act. The instructions correctly set forth the elements and the burden of proof and we conclude that the issue was fairly and correctly presented to the jury. Beyond that right, the defendants are not entitled to have instructions given in the particular form they desire or prefer. *United States* v. *Rothman* (December 28, 1977), Nos. 76-2270, 76-2294.

II.

Both Green and Griffin also contend there was insufficient evidence to find them guilty of the conspiracy charge in Count I.

Their argument primarily is that there was no showing of any "agreement" between them. However, since a conspiracy is ordi-

1. We note briefly that we find unpersuasive the claim that there was insufficient evidence for the jury to conclude that the activity was a "business enterprise" under the statute. In this case, there were two arrangements made to sell drugs, the conversations revealed that Green had been involved in drug transactions prior to this, and he referred to it himself as his "drug business."

narily characterized by secrecy, such an agreement may be inferred from the circumstances and conduct of the parties, *Glasser* v. *United States,* 315 U. S. 60 (1942), and it is only necessary to show that they tacitly came to a mutual understanding to accomplish an unlawful act and not that there was an express or formal agreement.

The evidence produced at the trial revealed that Griffin was present on all three of the occasions when Lewis and Green met to make arrangements for the drug sale.[2] In addition, the DEA informer, Lewis, testified that on the evening of the sale when Green returned to the car with a package, he first gave it to Griffin, who "opened it up, took something out, wrapped it back up and gave it to Green, and Mr. Green gave it to me [Lewis]." The package contained heroin. Further, since the jury could have found from the evidence above that Griffin was a member of the conspiracy, it was then free to consider the statement of her co-conspirator, Green. *Glasser* v. *United States, supra,* at 74; FED. R. EVID. 801(d)(2)(E). Lewis testified that when Griffin was first introduced to him, Green identified her as "his woman" and explained that he kept a woman with him all the time, when he was conducting his "drug business . . . to protect, to carry the stuff."

We conclude, when viewing the evidence and all reasonable inferences drawn therefrom in the light most favorable to the government, *Glasser* v. *United States, supra,* at 80, that there was sufficient evidence from which the jury could find that Green and Griffin did conspire to distribute heroin in violation of 21 U. S. C. §§ 841(a)(1) and 846.[3]

2. Lewis met Griffin on his first trip to Indiana on July 9, when price and arrangements were discussed. She was also present on July 17, when the first sale was attempted, but failed. She was with Green the entire evening of August 13, when the actual sale of heroin took place.

3. We also reject appellant Griffin's argument that the court below erred in its conspiracy instructions. The court correctly informed the jury that "there must be at least two parties to a con-

(Footnote continued on next page.)

III.

Green alleges that Count II charged him with two offenses, and therefore it was error for the court to deny his motion for acquittal and motion in arrest of judgment. The government's position, both below and on appeal, is that the mention of both Preludin and heroin in the same count was not to charge him with two offenses but only to identify the telephone conversation in which the sale of heroin, the offense charged, was discussed. Under FED. R. CRIM. P. 7(d), the reference to Preludin could have been stricken as surplusage, and the trial judge suggested to defense counsel that he so move, but the defendant chose not to do so. During his closing statement to the jury, counsel for Green argued that the telephone conversation did not show an attempt to sell heroin, the offense with which he was charged, but rather only contained talk of Preludin, and he reminded the jury that the defendant was not charged with an offense in connection with Preludin. The court also instructed the jury that they were not to find against the defendant as to his offer to buy Preludin. When the instructions were reread to the jury, after they had asked for additional instructions, the court repeated its statement regarding the Preludin. We do not find any error in the court's instructions to the jury or that by so doing it amended the indictment. We conclude from these circumstances and the instructions that were given to the jury that the charge was not duplicitous, and that only the issue of the use of the telephone as to the heroin sale was given to the jury.

We also reject defendant Green's argument that it was error for the trial court to refuse to give the alternative instructions tendered by him as to Counts II and III. The instructions that

(Footnote continued from preceding page.)
spiracy" and we do not find that by so stating the court was "forcing" or "encouraging" the jury to find at least two of the defendants guilty of conspiracy. There is no evidence that the jury misunderstood the instructions or applied an improper standard and accordingly we find no error. *United States* v. *Hamilton*, 420 F. 2d 1096, 1099 (7th Cir. 1970).

were given by the court were a correct statement of the proof required to convict Green on Counts II and III.

Finally, we also reject defendant Green's allegation that there was insufficient evidence to find that he used the telephone to establish a time and place for distribution of heroin as charged in Count III. The calls between Green and Lewis, prior to August 12, indicate that Green was attempting to set up arrangements for selling drugs to Lewis. On August 12, Green told Lewis to "come as soon as you can—right away man." In the second call on the same day, when Lewis told him he did not want to come to Indiana, Green told Lewis to "come to Chicago, and call me from there." The evidence was sufficient to find that Green used the telephone to facilitate the distribution of heroin by arranging a time and place for the transaction. The fact that no specific time or exact location was mentioned is of no consequence, it is not necessary under the statute and would indeed be highly improbable in a telephone call setting up an illegal drug transaction.

IV.

Griffin contends it was error for the court below to deny her motion, made following the cross-examination of informant Lewis, for additional disclosure by the government of the conviction record of Lewis. The record shows that during pretrial discovery, counsel for both defendants Green and Franklin sought to receive the arrest and conviction record of the government's witnesses. The government indicated it would be provided along with the "3500 material." The "rap sheet" of Lewis was provided to all defendants.

During direct examination Lewis was asked how many times he had been convicted of a felony, he responded "twice." On cross-examination the "rap sheet" was used to impeach the witness in regard to his felony conviction record. Because the witness disagreed with certain disposition entries on the rap sheet, the court allowed extensive cross-examination as to each

entry on the rap sheet. The defense was allowed to cross-examine regarding convictions which were well past the 10-year limitation contained in FED. R. EVID. 609 even though there had been no written notice provided to the government. Thus the record shows that the defense was allowed considerable latitude in his cross-examination, which enabled him to vigorously attack the credibility of the witness and successfully impeach him as to the number of convictions he had admitted on direct examination. The use of past criminal convictions is for impeachment purposes, *United States* v. *Mahone*, 537 F. 2d 922 (7th Cir. 1976), and this was effectively done from the "rap sheet." There was no showing that the government had any other material relating to the witness' conviction record which it had withheld from the defense. We find that there was no error committed by the trial court in its denial of the motion for additional material.

V.

The remainder of appellants' allegations of error do not warrant extended discussion and will be dealt with only briefly in this section.[4]

We find the argument that there was insufficient foundation for the admission of the tapes to be without merit. Before introduction of each tape, the government established 1) Lewis had had a telephone conversation with Green on that date, 2) Lewis had consented to the taping, 3) Lewis had listened to the recording after it was made and before trial, and 4) that each recording was a true and accurate recording of the conversation. In addition, it was established that Lewis recognized and identified the voice on the telephone and the tapes as that of defendant Green. The trial court has broad discretion in determining whether to allow a recording to be admitted. This "dis-

4. Appellant Green in the index to his brief lists the admission of the telephone records as one of the errors he is appealing. However, it is not discussed in his brief and no mention was made at oral argument and, therefore, we assume appellant no longer alleges error as to this issue.

cretion to admit the evidence is not to be sacrificed to a formalistic adherence [to a particular standard, and] if there is independent evidence of the accuracy of the tape recordings admitted at trial, we shall be extremely reluctant to disturb the trial court's decision. . . ." *United States* v. *Biggins*, 551 F. 2d 64 (5th Cir. 1977). We find no error. Also, since Lewis consented to the taping, Green has no basis for arguing that the tapes were obtained in violation of his constitutional rights. See *On Lee* v. *United States*, 343 U. S. 747 (1952); *United States* v. *Craig* (December 28, 1977), No. 76-2089.

We also reject Green's argument that additional foundation, establishing a chain of custody, was needed in order for the drug sample to be admitted at trial. The agent who received the drugs from Lewis testified that he put them in the heat-sealed bag, and the chemist testified that the bag had not been tampered with prior to his examination of the contents. This is sufficient to allow admission of the drug sample. See *United States* v. *Santiago*, 534 F. 2d 768 (7th Cir. 1976).

Finally, we reject Green's argument that the refusal of the court to question the prospective jurors regarding the issue of reasonable doubt and inference of innocence from circumstantial evidence prevented him from exercising his right to preemptory challenges. Questions to be asked on *voir dire* are within the discretion of the court. FED. R. CRIM. P. 24(a), and we can find no basis for concluding that the court here abused that discretion. The questions sought to be asked were properly brought forth at the close of the case.

For reasons given above, the convictions are hereby affirmed.

AFFIRMED.